Editor's note: 91 I.D. 9

GIAN R. CASSARINO

IBLA 83-527 Decided January 10, 1984

Appeal from decision of Alaska State Office, Bureau of Land Management, rejecting oil and gas lease offer AA-48576.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: First-Qualified Applicant

   An oil and gas lease offer is properly rejected under provision of 43 CFR 3111.1-1(a) where the offeror signs only two copies of five submitted lease offer forms.

2. Oil and Gas Leases: Noncompetitive Leases

   A defect in a noncompetitive oil and gas lease offer may, in the case of over-the-counter offers to lease, be curable. If the defect in the offer is cured, the offer obtains priority on the date it is correctly completed. However, while this rule has been applied in the past to permit offerors to rectify disqualifying errors and omissions after BLM has properly rejected them, the Board now finds that practice to be inappropriate and contrary to public policy and efficient administration. Henceforth, no "curative" submissions will be received by the Board of Land Appeals to reinstate lease offers which have correctly been rejected by BLM because of the deficiency.

APPEARANCES: Gian R. Cassarino, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Gian R. Cassarino appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 28, 1983, rejecting his noncompetitive oil and gas lease offer AA-48576 for failure to comply with requirements of 43 CFR 3111.1-1(a) by filing only two signed copies of the Departmental lease offer form. The record on appeal contains five copies of Departmental Form 3110-1, dated March 3, 1983, only two of which are signed by appellant. In his statement of reasons, filed with five signed copies of Form 3110-1, dated March 7, 1983, appellant contends his lease offer was filed "in quintuplicate," and argues that if any copies of the document are missing, they were lost by BLM clerks.

[1] Departmental regulation 43 CFR 3111.1-1(a) provides, pertinently:

> [T]o obtain a noncompetitive lease an offer to accept such lease must be made on a form approved by the Director * * *.

A lease offer must be submitted on five signed copies of the form approved by the Department. Duncan Miller, 10 IBLA 208, 211 (1973). Since appellant did not sign three of the five forms included in his offer as submitted, his offer was defective, and was properly rejected by BLM.

The argument advanced by appellant, that he submitted his offer in quintuplicate, does not directly address the defect in his submission. It was not sufficient, under provision of 43 CFR 3111.1-1(a), to merely submit five copies of the Departmental form. To be entitled to consideration as a

valid offer, appellant was required to submit five signed copies of the form. The record on appeal indicates affirmatively that he failed to do so.

Similarly, appellant's argument that any defect in his application was attributable to BLM mishandling of his offer is without apparent basis. The appearance in the record on appeal of five copies of appellant's March 3, 1983, submission, only two of which are signed, indicates that BLM correctly adjudged appellant's offer to be deficient for the reason stated in the decision rejecting his offer. This circumstantial evidence of record is supported by appellant's argument on appeal, which does not deny that he failed to sign three of the five copies submitted, but merely contends that five copies of the Departmental form were submitted. That fact is not an issue, since quite clearly five copies were received by BLM. The fact that only two of them were signed, however, is the reason the offer was rejected. As stated previously, this fact is not directly denied by appellant.

[2] Appellant, however, also filed five signed copies of his offer, dated March 7, 1983, with his notice of appeal on April 8, 1983, with the declared intention of correcting the deficiency.

Where a regular noncompetitive lease offer is filed "over-the-counter," 43 CFR 3111.1-1(e) (1982) provides that it will be approved notwithstanding certain deficiencies which are specifically listed in the regulation. In cases where the offer is deficient for reasons other than those listed in the regulation, the Board has long followed the practice of permitting the offeror to "cure" such deficiencies so that the offer can earn priority from

the date the filing is perfected in conformity with Departmental requirements. See, e.g., Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976), aff'g Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), Bear Creek Corp., 5 IBLA 202 (1972). Therefore, appellant's offer could hold priority of consideration from April 8, 1983. In the event there are no prior filings for the same lands, his offer should be considered for award of the lease. See also Richard F. Carroll (On Reconsideration), 76 IBLA 151, 90 I.D. 432 (1983).

The Board now perceives that the practice of allowing such defective offers to be "cured" and restored to efficacy by the submission of new material after BLM has adjudicated and rightly rejected them is improper, contrary to efficient administration, and contrary to the public interest. This finding rests on several bases.

First, the only advantage that accrues to the offeror by filing "amendments" or other curative material or information after his offer has been rejected is that he avoids paying the $75 filing fee which he would owe if he simply refiled a correct offer with BLM. There is no justification to permit him to thus avoid payment of another filing fee. BLM has received the offer as initially filed, posted its records, handled the accounting, adjudicated the case, issued the decision, received the notice of appeal, shipped the case file to this Board, where it is processed, docketed, reviewed by a panel of judges, and another decision is rendered, printed, and distributed, and the record returned to BLM. By this point, the Government has spent the initial $75 filing fee many times over.

Why should the same offer have to be processed again, at taxpayer expense, simply because the offeror is allowed to "correct" his offer rather than file a new one which is acceptable?

Second, as an appellate tribunal, this Board's primary function is to review BLM's decisions to determine if they reach a proper result in accordance with the law, regulations, and Departmental policies. If such decisions were properly rendered, BLM deserves, in most cases, to have them affirmed. 1/

Third, it is not the function of this Board to receive filings of that sort or to decide the effect of materials which BLM has not had the opportunity to review and adjudicate initially. In its receipt of over-the-counter lease offers, BLM uses a time and date stamp, some of which are calibrated in tenths of minutes, because the time is more critical than the date in fixing the respective priorities of conflicting offers. This Board is not equipped to do that, and it is not our function. Hypothetically, we might set an appellant's new priority on April 6, 1983, only to discover that another acceptable offer had been filed with BLM at 2:37.6 p.m. on that same day. How could the conflict be equitably resolved? 2/

1/ The Board, of course, will continue to consider new information generated after issuance of a BLM decision, and reverse, remand or modify even those decisions which were correctly made, where considerations of equity, new statutes, regulations, precedent, policy, or factual revelations make such action appropriate.

2/ That hypothetical problem could not arise in this case because the second set of appellant's offer forms passed through the BLM office before being sent to the Board, and were given the BLM stamp indicating the date and the time of receipt. However, in other cases the curative materials have been filed directly with this Board, and have only a date stamp to fix their priority.

Fourth, if no appeal is filed, the BLM decision becomes final for the Department. The filing of an appeal should not create a new opportunity for an offeror to correct all the original deficiencies.

In the case at hand, appellant did not send some curative document or information to this Board; he filed a notice of appeal with BLM and accompanied it with a resubmission of the offer in five new copies, properly executed. Had he simply foregone the appeal and paid the new filing fee with his new submission of lease forms, the cost to the Government of the entire appellate review could have been avoided, and the lease issued much more expeditiously. Instead, he saved paying a second filing fee and the cost of this unnecessary appeal and the reprocessing of the offer by BLM was imposed on the Government.

Henceforth, the Board will no longer permit defective regular, "over-the-counter" noncompetitive oil and gas lease offers to be resuscitated with new priority by the submission of "curative" material after those offers have been properly rejected by BLM. Such defective offers may still be cured before their rejection by BLM, with priority as of the date and time of their perfection. Prior Departmental decisions holding to the contrary will no longer be followed.

However, in the case at bar, it is the sense of the Board that in view of the long history of allowing such lease offers to be cured after rejection, and the abundant precedent upon which appellant is entitled to rely, the rule announced above should be implemented with prospective effect only.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified by this opinion. BLM is instructed to consider whether, under the circumstances, appellant's offer may be deemed, as of April 8, 1983, to be a perfected lease offer, and entitled to priority as of that date.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

Gail M. Frazier
Administrative Judge

Will A. Irwin
Administrative Judge

R. W. Mullen
Administrative Judge

ADMINISTRATIVE JUDGE ARNESS CONCURRING IN THE RESULT:

Although I agree with the result of the decision in this case, I am concerned that the Board today overrules a pattern of decisionmaking which has its apparent basis in prior Departmental precedent extending as far back as 1961. See William B. Collins, 4 IBLA 9 (1971); Raymond W. Russ, A-29294 (Mar. 18, 1963). Until now, this Board has consistently applied the rule that, in the case of over-the-counter offers only, an applicant might, following rejection by BLM, cure the defect in his offer which had caused its rejection. See discussion of this rule and its limitations in Richard F. Carroll (On Reconsideration), 76 IBLA 151, 160-63, 90 I.D. 432 (1983). The reason for the reversal now, in dicta to this decision, of a rule followed consistently for 20 years, is not apparent in the record of this appeal nor in previously reported decisions which developed and apply the rule. BLM, the Bureau of the agency most directly concerned with application of the rule, has not complained that the rule is administratively burdensome in the manner described by the majority opinion.

Indeed, the only appearance in this appeal is made by appellant, who has not directly raised the issue. Although the Board speculates that the rule might have become administratively inconvenient and could result in an ambiguous situation where two offers conflict because of a filing of successive over-the-counter offers on the same day, that situation has not been presented in this case, nor, apparently, in any other case in the 20 years in which this practice permitting curative action during appeal has been followed. The imagined advantages to be obtained by a change in the rule

do not appear to justify the probable disadvantage to those offerors who, in continued reliance upon prior practice may continue to attempt to perfect defective over-the-counter offers during appeal.

In the absence of agency objection, this apparently workable rule should not be changed. The Board should limit its decision to the case before it.

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Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

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Douglas E. Henriques
Administrative Judge

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Anne Poindexter Lewis
Administrative Judge